



The Attorney General of Texas

April 13, 1982

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Open Records Decision No. 313

Re: Availability under Open
Records Act of report of
internal investigation con-
cerning Department of Public
Safety officers

Dear Mr. Bailey:

The Department of Public Safety has been asked to release the
following information:

a copy of the records concerning an investigation
that was conducted by your department and
concluded about the month of October 1974 which
involved three officers of the Department of
Public Safety and [a certain individual] in regard
to the issuance of drivers licenses.

You advise:

While the investigation did result in some
disciplinary action for the DPS employees, no
outside individual was prosecuted. It should also
be noted that the person requesting this
investigation supplied the initial information
which resulted in the 1974 investigation.

You ask whether the department may withhold this internal
investigative report from public disclosure. In support of your
contention that it may do so, you cite section 3(a)(8) of the Open
Records Act, article 6252-17a, V.T.C.S., which excepts from required
disclosure:

records of law enforcement agencies that deal with
the detection and investigation of crime and the
internal records and notations of such law
enforcement agencies which are maintained for
internal use in matters relating to law
enforcement.

You also rely upon section 3(a)(11) of the act, which excepts:

inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than one in litigation with the agency.

With respect to the applicability of section 3(a)(8), we observed in Open Records Decision No. 287 (1981) that:

The section 3(a)(8) exception protects a law enforcement agency's records and notations if their release would unduly interfere with law enforcement. Cf. Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977). The best judge of whether the release of information would do so is ordinarily the law enforcement agency in possession of it, but the agency cannot arbitrarily relegate information to that category. When the 'law enforcement' exception is claimed as a basis for excluding information from public view, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how and why release of it would unduly interfere with law enforcement. (Emphasis added).

This investigation was concluded in 1974. Certain officers in the department were disciplined, but no one was prosecuted. Apparently, the matter has not been reopened since 1974. However, under certain circumstances, information from closed law enforcement files may be withheld.

The report contains statements of witnesses and informants. The standard for determining whether this information may be withheld was set out in Open Records Decision No. 297 (1981), wherein we said:

In our opinion, the names of these persons and their statements may be withheld if it is determined:

from an examination of the facts of the particular case that disclosure might either subject the witnesses to possible intimidation or harassment or harm the prospects of future cooperation between witnesses and law enforcement officers.

Open Records Decision No. 252. Whether a witness was given an express promise of confidentiality is

an important factor to be considered in reaching this decision, but it is not alone determinative either of disclosure or of non-disclosure. If you make the requisite determination, as indicated supra, you may withhold the names and statements of witnesses....

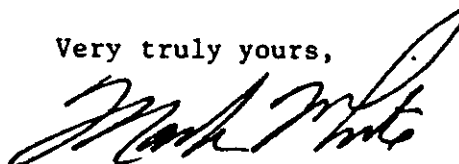
We believe this approach is appropriate in this instance. Accordingly, if you make the requisite determination, you may withhold the names and statements of witnesses and informants who participated in this investigation.

Finally, the investigatory report includes copies of applications for drivers licenses. If you determine, in light of the foregoing criteria, that the names and statements of witnesses and informants in this matter should be withheld, you may also withhold the names of these applicants, and any information which would tend to identify them. The fact that these particular applications were included in the investigative report would reasonably lead one to surmise that these individuals were witnesses or informants.

It appears from the letter requesting these records that the only information desired from the applications consists of names of witnesses and information identifying them. Thus, if you decide that names of witnesses should not be withheld you may release names and other identifying information. The requestor apparently does not wish to review medical history or driving history information. For that reason, we need not address the availability of this information under the Open Records Act.

Some of the investigative report is, however, excepted from disclosure under section 3(a)(11) as "intra-agency" memoranda. Section 3(a)(11) is applicable to the report to the extent that it consists of "advice, opinions and recommendations." Open Records Decision Nos. 273 (1981); 239 (1980). Where other information is so inextricably intertwined with material involving advice, opinions and recommendations as to make separation impractical, moreover, that information may be withheld as well. Open Records Decision No. 295 (1981). We have marked those portions of the report which may be withheld under section 3(a)(11).

Very truly yours,



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